

REQUEST FOR COUNCIL ACTION

SUBJECT: A Resolution ("Exhibit A"), No. 15-~~159~~, authorizing settlement of pending litigation, *LEE HOOGVELDT, Plaintiff, vs. IAN ADAMS, Other John Doe Officers of the West Jordan Police Department, and WEST JORDAN CITY, a Political Subdivision; and JOHN and JANE DOES 1-10, Defendants*, Case No. 2:15-cv-00309-BCW (United States District Court for the District of Utah).

SUMMARY: Approve settlement agreement between Lee Hoogveldt and the City of West Jordan to settle any and all claims Lee Hoogveldt has against the City and any of its employees. The attached settlement agreement completely resolves all claims of the current pending litigation.

**FISCAL
IMPACT:** The proposed settlement will require the City to pay \$125,000.00 to Mr. Hoogveldt in exchange for settlement of all claims and a dismissal of the pending litigation.

STAFF RECOMMENDATION:

Staff recommends adoption of the Resolution.

MOTION RECOMMENDED:

"I move to adopt Resolution No. ~~15-159~~ approving and authorizing the Mayor to sign the attached Settlement Agreement and Release of All Claims in the amount of \$125,0000.00 for settlement of the pending litigation."

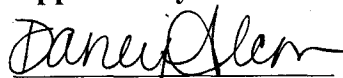
Roll Call vote required

Prepared by:



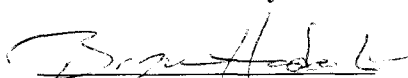
Paul D. Dodd
Civil Litigator

Approved by:



Darien Alcorn
Interim City Attorney

Recommended by:



Bryce Haderlie
Interim City Manager

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 15- 159

A RESOLUTION approving and adopting a litigation Settlement Agreement with Lee Hoogveldt resolving and disposing of pending litigation.

Whereas, the City Council has approval authority on significant agreements entered between the City and one or more third parties; and

Whereas, the City has reached a settlement of pending litigation with Lee Hoogveldt;

Whereas, the City Council finds that the settlement is in the best interest of the City and its citizens;

Whereas, a written Settlement Agreement has been prepared and signed by Lee Hoogveldt; and

Whereas, the City Attorney endorses and recommends approval of the attached Settlement Agreement.

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

Section 1. The Settlement Agreement between Lee Hoogveldt and the City, the form of which is attached hereto, be and is hereby adopted, approved and ratified.

Section 2. The Mayor is hereby authorized and directed to sign the Settlement Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 12th day of August, 2015.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim Rolfe

Melanie Briggs, City Recorder

Res. 15-159

Voting by the City Council

"AYE"

"NAY"

Judy Hansen

Sophie Rice

Chris McConnehey

Chad Nichols

Ben Southworth

Jeff Haaga

Mayor Kim V. Rolfe

SYKES | McALLISTER

AUG 04 2015

LAW OFFICES PLLC

Attorneys:

Robert B. Sykes
Alyson C. McAllister

Of Counsel:

Rachel L. Sykes†
†Also licensed in Idaho

*Practice Concentrates in
Personal Injury Law
Brain and Spinal Cord Injuries
Civil Rights Litigation*

311 S. State Street, #240
Salt Lake City, UT 84111
801.533.0222 (office)
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August 4, 2015

~ **Via Hand Delivery** ~

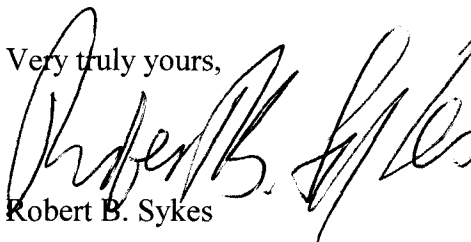
Paul D. Dodd
West Jordan City Attorney
City Hall – Second Floor
8000 S. Redwood Rd.
West Jordan, UT 84088

Re: *Hoogveldt v. Adams & West Jordan City*, Case No. 2:15-cv-00309-BCW

Dear Paul:

Please find enclosed the original Settlement Agreement and Release of All Claims, which has been signed by Lee Hoogveldt.

Very truly yours,



Robert B. Sykes

RBS:jac
Enclosure

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. This Release is made by certain parties hereinafter identified, with regard to any and all existing or possible actions, causes of action, claims, demands, damages, costs, fees, and expenses of any kind, on account of or in any way arising from or related to violations of civil rights, personal physical injuries, mental injuries, disability, property damage or other injuries or damages of any kind, resulting from and however related to the OCCURRENCE as set forth and defined herein.
2. The CLAIMANT, as defined hereinafter, desires to make this Release, in order to provide for certain payments in full settlement and discharge of all claims which are or might have been the subject of the injuries and claims made by CLAIMANT against the RELEASED PARTIES, as defined hereinafter, and upon the terms and conditions set forth herein. All parties hereto expressly state and agree that the resolution of this matter shall be in no way construed as an admission of liability. The RELEASED PARTIES expressly deny liability. Instead, CLAIMANT expressly agrees that the resolution of this matter as set forth in this Release represents an efficient resolution to the related claims and disputes.

DEFINITIONS:

3. "CLAIMANT" means: LEE HOOGVELDT, as well as any similarly named individuals, including: his heirs, administrators; personal representatives; past, present, and future officers; directors, and stockholders. Attorneys, agents, servants, representatives, employees, parents, subsidiaries, affiliates, partners, predecessors, successors-in-interest, assigns, insures, underwriters, joint ventures, and all other firms, persons, or corporations with whom the Claimant might have been, are now, or may hereafter be affiliated;
4. "RELEASED PARTIES" means: WEST JORDAN CITY, a political subdivision of the State of Utah, IAN ADAMS, a Police Officer of West Jordan Police Department and all other current and former police officers, departments, divisions, agencies, agents, attorneys, employees and contractors of West Jordan City, including any person or entity to whom any of the foregoing may owe a duty to defend or indemnify.
5. "OCCURRENCE" means: the facts and circumstances surrounding the entry of the home, arrest and injuries that allegedly occurred on or about March 24, 2013 at LEE HOOGVELDT'S home, being alleged to have caused damage or injury to CLAIMANT and to have violated his rights, and which event comprises the subject matter basis of, and is described by CLAIMANT in, the Complaint filed in, and currently pending before, United States District Court for the District of Utah, and captioned "*LEE HOOGVELDT, Plaintiff, vs. IAN ADAMS, Other John Doe Officers of the West Jordan Police Department, and WEST JORDAN CITY, a Political Subdivision; and JOHN and JANE DOES 1-10, Defendants*, Case No. 2:15-cv-00309-BCW.
6. "ALL CLAIMS" means:

- a. Any and all existing and future injury and/or damage claims resulting from, or alleged to have resulted from, the OCCURANCE, including but not limited to, damages for, bodily injury, pain and suffering, past, present and future medical damages, violations of civil rights, economic losses, actual damages, past and future lost wages, pecuniary losses, , mental anguish, , medical expenses, pre- and post- judgment interest, loss of earning capacity, incidental costs, out-of-pocket expenses, interest, emotional trauma, physical injury, bodily harm, attorney's fees, costs of court and litigation, and any and all other damages, expenses, or claims, that were asserted or could have been asserted, including loss as a result of paying and/or satisfying any third party's claims, and causes of action for all existing and future damages, and remedies arising out of or related to the OCCURANCE that have been or could have been asserted by CLAIMANT.
 - b. All past, present, and future injury, losses and damages of any kind arising out of or related to the OCCURANCE including, but not limited to, all actual damages, incidental damages, consequential damages, exemplary and punitive damages, personal injury damages, property loss or damage, penalties of any kind, attorney's fees, costs, taxable costs, pre-judgment and post-judgment interest, and other expenses, including judgment liens, and any other form of intervention in connection with said injuries or other damages sustained by the CLAIMANTS.
 - c. All elements of damages, remedies, claims, demands, and causes of action that are now recognized by law or that may be created or recognized in the future in any manner, including without limitation, by statute, regulation, or judicial decision, arising out of or related to the OCCURANCE, including, without limitation, claims premised upon violations of civil rights under either 42 U.S.C. §§ 1983, 1988 or Constitution(s) or statutes or administrative ruled of the United States or Utah, the Americans with Disability Act or the Family Medical Leave Act.
7. "CONSIDERATION" means: The payment and other goods and valuable consideration, by or on behalf of the RELEASED PARTIES to CLAIMANT and/or those entities whom they may designate, to be applied to a full and final settlement, as to claims referenced herein, of the OCCURANCE and ALL CLAIMS related thereto, of the following: Payment from RELEASED PARTIES in the sum of One Hundred and Twenty Five Thousand dollars and no cents (\$125,000.00) made payable jointly to "Sykes McAllister Trust Account for and on behalf of Lee Hoogveldt."

GENERAL RULES OF CONSTRUCTION:

8. It is intended by this Release to settle all claims between them and therefore that it be as general as possible and that it shall cover every conceivable contingency which might arise in the future, whether known or unknown at this time related to the OCCURANCE.
9. No party shall be considered the drafter of this Release for the purposes of construing the terms of this Release.

10. Headings used in this Release are for convenience and do not alter the meaning of the terms of the Release.
11. The payments referenced herein above constitute the total monetary payment to be made to and for CLAIMANT by or on behalf of the RELEASED PARTIES for ALL CLAIMS, together with all the promises, agreements, and representations set forth below.
12. In this Release, the use of the singular includes the plural and vice versa; likewise, the disjunctive includes the conjunctive and vice versa and the use of masculine pronouns includes feminine pronouns and vice versa.

TERMS AND CONSIDERATION:

13. For the CONSIDERATION set forth herein, CLAIMANT RELEASES, ACQUITS, and FOREVER DISCHARGES the RELEASED PARTIES from ALL CLAIMS.
14. CLAIMANT acknowledges the receipt and sufficiency of the CONSIDERATION by signing this Release. The payment of the CONSIDERATION is not an admission of liability or negligence by the RELEASED PARTIES and may not be so construed, nor shall it ever be used as evidence of liability of the RELEASED PARTIES in any suits, claims or causes of action whatsoever.
15. CLAIMANT acknowledges that the CONSIDERATION described above and its subparagraphs herein constitute the total monetary payment to be made to and for CLAIMANT by or on behalf of the RELEASED PARTIES for ALL CLAIMS.
16. The CONSIDERATION will be all the monies that the RELEASED PARTIES will ever be called upon to pay for ALL CLAIMS.
17. CLAIMANT understands and agrees that the OCCURANCE may have caused injuries and damages, the existence of which and the consequences of which are now unknown but which may become known in the future. CLAIMANT nevertheless intends to and does release all claims for injuries and damages to CLAIMANT, whether now known or unknown and whether now in existence or hereafter to arise. This Release shall receive the broadest possible interpretation as a general and complete release

INDEMNIFICATION AND RELATED DUTIES:

18. CLAIMANT expressly agrees to reimburse defense costs, including but not limited to attorney's fees, and to indemnify and hold the RELEASED PARTIES harmless, at CLAIMANT'S expense, from and against ALL CLAIMS asserted in the future by or on behalf of LEE HOOGVELDT and all his heirs whether parties to this Release or not, claiming by, through, or under CLAIMANT, regardless of whether the RELEASED PARTIES were responsible for, at fault for, negligent, whether solely or concurrently,

strictly liable, or in breach of any contract, in whole or in part, for the OCCURANCE, or any damages arising therefrom.

19. CLAIMANT agrees and acknowledges that it is his sole and exclusive obligation to satisfy all liens, conditional payments, debts, rights of subrogation, and any other claims or actions asserted against them and the proceeds of this settlement, whether now known or unknown, including but not limited to any liens by any medical care provider, or any Medicaid or Medicare liens resulting from payment or expenses for hospital or other care and treatment of LEE HOOGVELDT. Any amounts claimed due to liens asserted by any person or entity after the date of the execution of this Release related to, or arising from, in any way to CLAIMANT and/or the OCCURANCE are agreed, and assumed to be, the CLAIMANT'S sole responsibility.
20. CLAIMANT further agrees to release RELEASED PARTIES from any liens, debts, rights of subrogation, and any other claims or actions asserted against them or the proceeds of this settlement by anyone claiming by, through, or under CLAIMANT, whether now known or unknown, including any Medical or Medicare liens resulting from the payment of expenses for hospital or other care and treatment of LEE HOOGVELDT.
21. CLAIMANT further agrees to defend, indemnify and hold harmless RELEASED PARTIES from any damages, demands for payment or reimbursement, liens, debts, rights of subrogation, and/or any other claims or actions asserted against it and the proceeds of this settlement, by anyone claiming by, through, or under CLAIMANT, whether now known or unknown, including any Medicaid or Medicare liens resulting from the payment or expenses for hospital or other care treatment of LEE HOOGVELDT.
22. CLAIMANT specifically warrants that he is not aware of any Medicare or Medicaid benefits paid for the medical care and treatment rendered to LEE HOOGVELDT. CLAIMANT further warrants that any Medicare or Medicaid liens, whether now known or unknown, resulting from the payment of expenses for hospital or other care and treatment of LEE HOOGVELDT'S injuries and damages, will be fully satisfied by the CLAIMANTS from the settlement proceeds or otherwise. CLAIMANT further warrants that he is solely responsible for drafting and obtaining approval of any needed Medicare set-aside agreement and that CLAIMANTS will indemnify and hold the RELEASED PARTIES harmless for any failure to have an approved Medicare set-aside agreement if one is needed.

AUTHORITY AND MERGER:

23. CLAIMANT represents and warrants that no other person or entity has or has had any interest in the subject matter of this Release. CLAIMANT further represents and warrants that he has the sole right and exclusive authority to execute this Release and that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release, other than the legal counsel, if any, representing CLAIMANT on the day this Release is executed.

24. Any and all prior agreements between CLAIMANT and the RELEASED PARTIES related to the OCCURANCE are merged into this instrument, such that this Release contains the entire agreement between CLAIMANT and the RELEASED PARTIES with regard to the OCCURANCE. CLAIMANT agrees that there can be no modification, amendment or supplementation of and agree that there can be no modification, amendment or supplementation of any of the terms of this Release without the express written consent of the Parties affected thereby.
25. In entering into this Release, CLAIMANT represents that CLAIMANT understands this document and were represented by legal counsel of CLAIMANTS' choice who explained the terms hereof to CLAIMANT, and that CLAIMANT fully understands and voluntarily accepts this Release.

REMAINING TERMS:

26. This Release shall be construed and interpreted in accordance with the laws of the State of Utah. Venue for enforcing or interpreting this Release shall be in the Third District Court in Salt Lake County, Utah. In any action to enforce or interpret this Release, the prevailing party shall be entitled to costs and reasonable attorney's fees.
27. CLAIMANT agrees to cooperate fully and execute any and all supplementary documents, including but not limited to a Joint Motion to Dismiss and Order in Case number 2:15-cv-00309-BCW in the United States District Court for the District of Utah, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.
28. These provisions, and each portion of each provision, of this Release are severable, and that all provision are valid and enforceable. If however, for any reason, any portion of this Release is held to be void or invalid, any remaining provisions shall remain in full force and effect.
29. This Release shall become effective following execution by CLAIMANT.
30. Copies of those documents, scanned, faxed, or otherwise, are as enforceable as the original as long as a signature is present. This document is enforceable in multiple copies if all copies yield, in total, at least one signature per party. Digital signatures are as valid as manual autographs where allowed by law or court rule.
31. RELEASED PARTIES agree that the individual who signs below on behalf of RELEASED PARTIES has authority to enter this agreement on behalf of RELEASED PARTIES.

SIGNATURES OF RELEASED PARTIES

DATED and SIGNED this ____ day of August, 2015.

On behalf of RELEASED PARTIES

Title

UTAH)
) ss:
COUNTY OF _____)


Subscribed and sworn to before me this ____ day of August, 2015 by
_____.

Notary Public
My Commission expires:_____

322



LEE HOOGVELDT

COUNTY OF Salt Lake) ss:

 Notary Public
JACQUIE SMITH
Commission #881308
My Commission Expires
January 28, 2019
State of Utah

APPROVED AS TO FORM this 3rd day of August, 2015.

APPROVED AS TO FORM this 9 day of AUGUST 2017


Robert B. Sykes
SYKES MCALLISTER LAW OFFICES, PLLC
ATTORNEYS FOR PLAINTFFS